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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2318 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT: Bhoyo @ Bhola Uraon, S/o Baju Uraon, aged about 51 years, Occupation-Agriculture R/o Village Pashchim Karkalli, P.S. Kusmi, District: Surguja (C.G.)

Versus

RESPONDENT: State of Madhya Pradesh, (now C.G.) Through S.H.O., P.S. Kusmi, District: Surguja (C.G.)

Present:

Shri R.K. Jain, Advocate for the appellant.

Shri Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.

Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 19-3-2007)

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 31st July 2000, passed by the Sessions Judge, Surguja, in S.T. No.309/99 whereby learned Sessions Judge after holding the accused guilty for commission of offence under Section 302 of the I.P.C., for committing murder of Khasruram, sentenced him to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 4 months.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Case of the prosecution, in brief, is that Ganesh (PW-2) gave merg intimation (Ex.-P/2) in the Police Station Kusmi on 16-8-99 at 7 a.m. to the effect that yesterday night i.e. on 15-8-99 he took his dinner at the residence of his brother Khasruram, thereafter at about 11 p.m. in the night he returned to his house, at that time Sasturam, Virendra Ram, Bhoyo and his brother's wife Mariyo were at the residence. At about 1.30 a.m. in the night Loya and accused Bhoyo came to his house. Bhoyo informed him that he is frightened, therefore, it is not possible for him to go to the residence of Khasruram. Both of them asked him to accompany to the house of Khasruram, therefore, he accompanied them and saw that his brother was lying dead near earthen oven. There was blood on the ground. His brother's neck was cut. Seeing this he started crying. Thereafter, wife of his brother came out. Near the door of the house blood stained axe is lying. Murder of his brother has been committed with axe. Receiving this merg intimation Station House Officer, P.S. Kusmi registered F.I.R. (Ex.-P/1), left for scene of occurrence, after giving notice Ex.-P/3 to the Panchas, prepared inquest Ex.-P/4 on the body of Khasruram. Ex.-P/5 map of the place of occurrence was prepared by the Patwari. Ex.-P/6 map was prepared by the Investigating Officer. While in the police custody, the accused gave memorandum Ex.-P/7 to the effect that he can get recovered his Dhoti which he was wearing at the time of commission of offence, same has been concealed in the Varandah of the house of the deceased, in pursuance of that, Dhoti was seized under Ex.-P/8. Blood stained soil, plain soil as well as rice, thali were seized under Ex.-P/8 from the place of occurrence. Axe, weapon of offence was seized under Ex.-P/9. The body of deceased Khasruram was sent for postmortem examination to the Primary Health Centre, Kusmi under Ex.-P/11 where

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PW-6 Dr. T. Sai conducted postmortem, prepared postmortem report Ex.-18 in which he opined that cause of death was coma and haemorrhage due to injury on the head and neck. Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar from where report Ex.-P/17 was received, from where articles were sent for examination to the Serologist from where report Ex.-P/19 was received.

After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, where the prosecution in order to establish charge against the accused examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused has admitted that in the fateful night he was sleeping in the Varandah of the house of the deceased. He has also admitted that he went to the house of Loya and informed him. He has also admitted that axe, weapon of offence, belongs to him. However, he denied involvement in the crime in question.

Learned Sessions Judge after hearing arguments of counsel for respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Homicidal death is not in dispute. PW-6 Dr. T. Sai, who conducted postmortem, noticed following injuries:-

(1) Incised wound on posterior aspect of neck in the size of 4" x 1.5" skin up to deep bone regular in shape,

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(2) Incised wound on right occipital region of scalp in the size of 4" x 1.5" skin up to deep brain regular brown in colour,

(3) Incised wound on anterior aspect of neck 1cm below the thyroid cartilage in the size of 2.5" x 1.5" skin up to deep trachea,

(4) Skull bone was fractured. Membrane and brain was ruptured.

In his opinion, cause of death was coma and haemorrhage on account of injury to head and neck. Death was homicidal in nature. Therefore, in view of the above, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused in crime in question is concerned, there is no ocular evidence. Only the evidence of PW-5 Mariyo Bai, wife of the deceased, is relevant. She has stated that in the fateful night, she was sleeping along with her husband. The accused was sleeping in the Varandah of their house. Remaining evidence that after hearing cries of her husband, she woke up and saw the accused running away after throwing axe has not been believed by the trial Court. The accused has been convicted placing reliance on the evidence of PW-1 Loya, who has stated that the accused made extra judicial confession before him. Other circumstantial evidence is that blood was found on the Dhoti of the accused.

Shri Jain argued that evidence of PW-1 Loya is not worth reliance because house of this witness is at a distance of 1½ km whereas the house of Ganesh is adjacent to the house of the deceased, therefore, there was no occasion for the accused to go to the house of Loya instead of Ganesh, as his house is adjacent to the hose of the deceased. He

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further argued that even PW-2 Ganesh Ram, brother of the deceased, in para-3 of his evidence has stated that Loya in the presence of the accused informed him that accused Bhoyo made confession before him that he has committed murder of the deceased, on which he inquired from the accused, then the accused denied that he has committed the murder. In view of the above evidence of brother of the deceased, extra judicial confession made before PW-1 Loya cannot be believed.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate arguments advanced by learned counsel for the appellant we have scrutinized evidence of PW-1 Loya and PW-2 Ganesh Ram as also statement of the accused recorded under Section 313 of the Cr.P.C.. The accused in his statement under Section 313 Cr.P.C. has admitted that in the fateful night he was sleeping in the Varandah of the house of the deceased. In reply to question Nos. 9, 10 and 11, the accused has admitted that in the fateful night at 12.00 hours he went to the house of Loya. He asked him to wake up. He asked him to accompany him to the house of Khasruram. But he has denied that he made confession before Loya that he has committed murder of the deceased. Therefore, it is admitted position that the accused was sleeping in the Varandah. He himself went to the house of Loya in order to inform him about death of the deceased. He brought Loya along with him to the house of Khasruram where dead body of the deceased was lying. PW-1 Loya has further stated that when he refused the accused to accompany to the house of Khasruram, he disclosed that he has committed murder of deceased Khasruram, village Sarpanch, on which he

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inquired from him whether he has informed Ganesh, brother of the deceased. Thereafter, he along with the accused went to the house of Ganesh. They brought Ganesh to the house of Khasruram where axe and dead body of Khasruram were lying. This witness has not been cross-examined by the defence in order to ascertain veracity of the evidence given by this witness as to whether the accused made extra judicial confession before this witness. So aspect of making extra judicial confession before this witness by the accused remained unchallenged because by cross-examination this aspect has not been disputed by the defence. The accused himself went to the house of this witness, thereafter he took him to the place. He is an independent witness. Nothing has been brought on record to indicate that this witness has any bias or animosity against the accused to implicate him in such a heinous offence. Therefore, when the accused himself has admitted in his statement under Section 313 Cr.P.C. that he went to the house of this witness, argument advanced by learned counsel for the appellant that there was no occasion for this witness to go to the house of the appellant stands demolished.

As far as second argument of Shri Jain that PW-2 Ganesh Ram, brother of the deceased, has stated that when Loya informed him that the accused has admitted before him that he has committed murder of the deceased, he inquired from the accused but the accused disputed this fact, therefore, extra judicial confession is not worth reliance, is concerned, we are not convinced with the argument advanced by learned counsel for the appellant for the reason that it is admitted position that Ganesh Ram is the brother of the deceased. In the first instance, the accused instead of going to the house of Ganesh whose house is adjacent to the house of the deceased, preferred to go to the house of Loya, which

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is at some distance and informed him about the incident. Therefore, same fact desisted the accused from making confession before Ganesh which persuaded him to go to the house of Loya because Loya was independent person that is why he disclosed to him everything. Being brother of the deceased, the accused did not disclose about commission of murder by him.

Shri Jain also argued that merely on the ground of extra judicial confession the accused cannot be convicted.

The law on the point is that if extra judicial confession is voluntary, true and prompt, same inspires confidence of the Court, in that case, conviction can be based on the basis of extra judicial confession. But where the Court reaches to the conclusion that it is not safe to convict merely on the basis of extra judicial confession looking to the evidence regarding extra judicial confession, then Court can seek for corroboration before placing conviction on that. In the present case, as has been discussed above, the accused himself has admitted in his statement under section 313 Cr.P.C. that he was sleeping in the Varandah at the time of commission of crime, the accused himself went to the house of Loya and informed him about the death of the deceased, when Loya refused to accompany him to the house of Khasruram, then he disclosed that he has committed murder of the deceased, thereafter this witness first went to the house of Ganesh, brother of the deceased. The accused took them to the house of Khasruram where body of Khasruram and axe were lying. The fact that the accused has admitted in his statement under Section 313 Cr.P.C. that axe, weapon of offence, belongs to him, is also a corroborative piece of evidence regarding confession made by the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused. Even Dhoti of the accused was seized at his instance based on his memorandum under Ex.-P/8, as per F.S.L. report Ex.-P/17 Dhoti was found stained with blood, the accused has not offered any explanation as to how his Dhoti was stained with blood. Even the axe was stained with blood. Moreover, the accused was sleeping in the Varandah of the room where the deceased and his wife were sleeping. Even he went to the house of Loya to inform him about the death of the deceased, but he has not explained the circumstances under which offence i.e. murder of Khasruram was occurred, how he came to know about death of Khasruram and commission of offence, he has not narrated. As per the provisions of Section 106 of the Evidence Act, the accused was under the duty as that was within his special knowledge, to explain how the crime was committed, but he has failed to discharge the burden which was on his shoulder under Section 106 of the Evidence Act. Since the accused was sleeping in the Varandah where offence was committed, therefore, he was the best person to disclose circumstances under which offence was committed whether he saw any other person who committed crime or he woke up when the crime was committed or he saw anybody running away, no explanation has been given by him. Therefore, this fact is also an additional circumstance to show that extra judicial confession was made by the accused before PW-1 Loya.

For the foregoing reasons, we are of the considered opinion that extra judicial confession made by the accused before Loya (PW-1) was voluntary, true and that extra judicial confession is also corroborated by circumstantial evidence which has been discussed above.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —9—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**
Barve		

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